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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20040108

Application Number: 09/963,625

Filing Date: September 27, 2001

Appellant(s): WANG ET AL.

MAILED  
JAN 20 2004  
GROUP 1700

George A. Grove  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 26, 2003.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1 and 3-7 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,309,427 B1	Korte	10-2001
5,760,981	Gillich	06-1988
5,616,231	Askin et al.	04-1997
5,181,969	Komatsubara et al.	01-1993

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

I. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Korte** (US Patent No. 6,309,427) in view of **Gillich** (US Patent No. 5,760,981).

Korte teaches a method of forming a colored bright anodized coating on a surface of an aluminum alloy article, wherein said alloy contains more than three percent by weight magnesium ( $\leq$  6 percent by weight) [col. 5, lines 55-65], said method comprising the steps of:

(a) anodizing said surface in an aqueous sulfuric acid bath at a temperature in the range of 18 to 25°C ( $=$  5 to 50°C) and at a current density in the range of about 3 A/ft<sup>2</sup> to 10 A/ft<sup>2</sup> ( $=$  0.3 to 5 A/dm<sup>2</sup>  $=$  2.8 to 46.4 A/ft<sup>2</sup>) [please see page 8, lines 23-24, of the Appeal Brief] that produces a desired thickness ( $=$  2 to 35  $\mu$ m) of an anodized layer suitable for color finishing (col. 5, line 66 to col. 6, line 49); and

(b) coloring (= dyeing) said anodized layer to produce said colored coating (col. 7, lines 1-47).

The anodizing is conducted at said temperature that is in the range of 18 to 25 °C ( $=$  5 to 50 °C) [col. 6, lines 18-20].

Korte does not teach wherein the aqueous sulfuric acid bath contains 100-200 grams of sulfuric acid per liter of bath.

However, Gillich teaches anodizing aluminum in a sulfuric acid electrolyte such as the DS process (direct current, sulfuric acid) in which the concentration of sulfuric acid is normally 20%.

Thus, it would have been obvious to one of ordinary skill in the art to modify **Korte** by using the sulfuric acid concentration disclosed by **Gillich** because **Korte** in column 5, line 66 to col. 6, line 18, show that the DS process is well known to anodize an aluminum surface, and 100-200 grams of sulfuric acid per liter of bath (which is equivalent to the 20% sulfuric acid disclosed by **Gillich**, see page 6, lines 14-15, of the Appeal Brief) would be required to form an oxide surface in **Korte**.

As to wherein the anodized layer is clear, the layers obtained with a sulfuric acid concentration of 20% would have produced an anodized layer that is clear as taught by **Gillich** (col. 1, line 66 to col. 2, line 29).

II.     Claims **3 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Korte** (US Patent No. 6,309,427) in view of **Gillich** (US Patent No. 5,760,981) as applied to claim 1 above, and further in view of **Askin et al.** (US Patent No. 5,616,231) and **Komatsubara et al.** (US Patent No. 5,181,969).

The **Korte** combination is as applied above and incorporated herein.

**Korte** does not teach conducting prior to said anodizing step, immersing said surface to be anodized in an aqueous acid solution at a temperature below about 100°F, said solution comprising one or more mineral acids selected from the group consisting of, by weight, ten to twenty percent sulfuric acid, ten to thirty percent nitric

acid, and forty to eighty percent phosphoric acid until the magnesium content in said surface is reduced to less than three percent and to produce a glossy surface; and further comprising, during said immersing step, establishing said surface as an anode in a direct current circuit with said solution as an electrolyte and applying a direct current voltage of 10 to 25 volts to said surface.

However, Askin teaches an aqueous acid solution at a temperature below about 100°F (= 90°-150°F), said solution comprising ten to twenty percent sulfuric acid (= 8-15 vol%) and forty to eighty percent phosphoric acid (= 50-70 vol%) and establishing said surface as an anode in a direct current circuit with said solution as an electrolyte and applying a direct current voltage of 10 to 25 volts (= between 5 and 50 volts) [col. 2, line 52 to col. 3, line 16].

Thus, it would have been obvious to one of ordinary skill in the art to modify Korte by using the electrobrightening solution disclosed by Askin because it is well known to produce a bright (= glossy) aluminum alloy surface with such a solution as taught by Askin (col. 2, line 52 to col. 3, line 16) which would have naturally reduced the magnesium content in said surface.

As to less than three percent, limiting the Mg content to 2.0 to 8.0% magnesium is effective in improving superplastic forming behavior by promoting dynamic recrystallization. It is also effective in improving the strength and superplasticity of

aluminum alloy materials both before and after anodization without adversely affecting the corrosion resistance and weldability thereof as taught by Komatsubara (col. 3, lines 41-56).

III. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Korte** (US Patent No. 6,309,427) in view of **Gillich** (US Patent No. 5,760,981).

Korte teaches a method of making a body component for an automotive vehicle, said component comprising an aluminum alloy containing more than about four percent by weight magnesium ( $\leq$  6 percent by weight) [col. 5, lines 55-65], said method comprising the steps of:

- (a) providing a body component having a surface requiring a decorative finish (col. 1, lines 5-18);
- (b) anodizing said surface in an aqueous sulfuric acid bath at a temperature in the range of about 18 to 25°C ( $=$  5 to 50°C) and at a current density in the range of about 3 A/ft<sup>2</sup> to 10 A/ft<sup>2</sup> ( $=$  0.3 to 5 A/dm<sup>2</sup>  $=$  2.8 to 46.4 A/ft<sup>2</sup>) [please see page 8, lines 23-24, of the Appeal Brief] to form a coating of aluminum oxide having a thickness of about 10 to 25 micrometers ( $=$  2 to 35  $\mu$ m) [col. 5, line 66 to col. 6, line 49]; and
- (c) coloring ( $=$  dyeing) said coating of aluminum oxide to produce said decorative finish (col. 7, lines 1-47).

Korte does not teach wherein the aqueous sulfuric acid bath contains 100-200

grams of sulfuric acid per liter of bath.

However, Gillich teaches anodizing aluminum in a sulfuric acid electrolyte such as the DS process (direct current, sulfuric acid) in which the concentration of sulfuric acid is normally 20%.

Thus, it would have been obvious to one of ordinary skill in the art to modify Korte by using the sulfuric acid concentration disclosed by Gillich because Korte in column 5, line 66 to col. 6, line 18, show that the DS process is well known to anodize an aluminum surface, and 100-200 grams of sulfuric acid per liter of bath (which is equivalent to the 20% sulfuric acid disclosed by Gillich, see page 6, lines 14-15, of the Appeal Brief) would be required to form an oxide surface in Korte.

As to wherein the anodized layer is clear, the layers obtained with a sulfuric acid concentration of 20% would have produced an anodized layer that is clear as taught by Gillich (col. 1, line 66 to col. 2, line 29).

As to wherein the component is formed from a sheet, this is well within the skill of the artisan because a sheet is easier to shape than a solid block.

**IV.** Claims **6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over

**Korte** (US Patent No. 6,309,427) in combination with **Gillich** (US Patent No. 5,760,981) as applied to claim 5 above, and further in view of **Askin et al.** (US Patent No. 5,616,231) and **Komatsubara et al.** (US Patent No. 5,181,969).

The Korte combination is as applied above and incorporated herein.

Korte does not teach conducting prior to said anodizing step, immersing said surface to be anodized in an aqueous acid solution at a temperature below about 100°F, said solution comprising one or more mineral acids selected from the group consisting of, by weight, ten to twenty percent sulfuric acid, ten to thirty percent nitric acid, and forty to eighty percent phosphoric acid until the magnesium content in said surface is reduced to less than three percent and to produce a glossy surface; and further comprising, during said immersing step, establishing said surface as an anode in a direct current circuit with said solution as an electrolyte and applying a direct current voltage of 10 to 25 volts to said surface.

However, Askin teaches an aqueous acid solution at a temperature below about 100°F (= 90°-150°F), said solution comprising ten to twenty percent sulfuric acid (= 8-15 vol%) and forty to eighty percent phosphoric acid (= 50-70 vol%) and establishing said surface as an anode in a direct current circuit with said solution as an electrolyte and applying a direct current voltage of 10 to 25 volts (= between 5 and 50 volts) [col. 2, line 52 to col. 3, line 16].

Thus, it would have been obvious to one of ordinary skill in the art to modify Korte by using the electrobrightening solution disclosed by Askin because it is well known to produce a bright (= glossy) aluminum alloy surface with such a solution as taught by Askin (col. 2, line 52 to col. 3, line 16) which would have naturally reduced the magnesium content in said surface.

As to less than three percent, limiting the Mg content to 2.0 to 8.0% magnesium is effective in improving superplastic forming behavior by promoting dynamic recrystallization. It is also effective in improving the strength and superplasticity of aluminum alloy materials both before and after anodization without adversely affecting the corrosion resistance and weldability thereof as taught by Komatsubara (col. 3, lines 41-56).

#### ***(11) Response to Argument***

##### **The Claim Limitations**

Applicants state that the references applied by the Examiner do not recognize or address the problem of obtaining clear anodized coatings on such magnesium containing aluminum alloys.

In response, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by the Applicants. *In re Linter* 458 F 2d 1013, 173 USPQ

560 (CCPA 1972); *In re Dillon* 919 F 2d 688, 16 USPQ 2d 1897 (Fed. Cir. 1990), cert. denied, 500 USPQ 904 (1991); *In re Linter* 458 F 2d 1013, 173 USPQ 560 (CCPA 1972); *In re Dillon* 919 F 2d 688, 16 USPQ 2d 1897 (Fed. Cir. 1990), cert. denied, 500 USPQ 904 (1991) and MPEP § 2144.

Applicants state that the color or appearance of the coating on a particular alloy is not predictable from a statement of bath composition and temperatures.

In response, it is deemed that the bath composition and temperatures are anodizing conditions that determined the color or appearance of the coating on a particular alloy. Although the Examiner agrees that it is not predictable from a statement, there is a suggestion in the prior art.

Applicants state that the references don't teach how to avoid dark anodized coating on any aluminum alloys.

In response, Korte does not teach the color of the anodized coating obtained; Gillich teaches obtaining a clear anodized coating (col. 1, line 66 to col. 2, line 10); Askin et al. is directed to electropolishing; and Komatsubara et al. teaches obtaining grey to black anodized coatings but is used in the Examiner's rejection for the reasons of why someone would want to reduce the magnesium content in the surface to less than 3% (col. 3, lines 39-56).

Applicants state that the practice of using such a pre-anodizing, magnesium content reducing, mineral acid treatment to facilitate the formation of a clear anodized surface on such an article is not disclosed in the prior art.

In response, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by the Applicants. *In re Linter* 458 F 2d 1013, 173 USPQ 560 (CCPA 1972); *In re Dillon* 919 F 2d 688, 16 USPQ 2d 1897 (Fed. Cir. 1990), cert. denied, 500 USPQ 904 (1991); *In re Linter* 458 F 2d 1013, 173 USPQ 560 (CCPA 1972); *In re Dillon* 919 F 2d 688, 16 USPQ 2d 1897 (Fed. Cir. 1990), cert. denied, 500 USPQ 904 (1991) and MPEP § 2144.

Applicants state that the process of claims 4 and 7 is to be executed to reduce the magnesium content at the surface of the magnesium containing aluminum alloy workpiece or article. The prior art does not show such a practice.

In response, Askin teaches immersing a manganese containing aluminum alloy (col. 3, line 52 to col. 4, line 7) in an aqueous acid solution at a temperature below about 100°F (= 90°-150°F), said solution comprising ten to twenty percent sulfuric acid (= 8-15 vol%) and forty to eighty percent phosphoric acid (= 50-70 vol%) and establishing the alloy as an anode in a direct current circuit with the solution as an electrolyte and applying a direct current voltage of 10 to 25 volts (= between 5 and 50 volts) to the alloy

(col. 2, line 52 to col. 3, line 16). Askin teaches a similar pretreatment process as presently claimed. Similar processes can reasonably be expected to yield products which inherently have the same properties. *In re Spada* 15 USPQ 2d 1655 (CAFC 1990); *In re DeBlauwe* 222 USPQ 191; *In re Wiegand* 86 USPQ 155 (CCPA 195).

### The Patent References

Korte, U.S. 6,309,427

Applicants state that Korte is not worried about producing clear anodized coatings on aluminum surfaces alloy surfaces. Regardless of an inherent color in an anodized coating on some aluminum alloy, Korte proposes to dye it (overdye) anyway.

In response, whether Korte is worried about producing clear anodized coatings on aluminum surfaces alloy surfaces or not, the question is whether the DS process (direct current; sulfuric acid) [Korte, col. 5, line 66 to col. 6, lines 18] produces clear anodized coatings. The Examiner deems that the DS process does as taught by Gillich (col. 1, line 66 to col. 2, line 10).

In regards to an inherent color in an anodized coating on some aluminum alloy, Korte does not teach the color of the anodized coating obtained. The anodized coating obtained can be predyed and then overdyed (Sandolar process) to obtain mute shades (col. 6, lines 57-67). This teaching does not suggest that the anodized coating obtained by Korte inherently has color.

Applicants state that the Korte reference says nothing about how to deal with anodized coatings that may be black, dark or otherwise discolored (except that they can be overdyed with his chromium dyes).

In response, the Korte reference says nothing about how to deal with anodized coatings that may be black, dark or otherwise discolored because Korte does not teach the color of the anodized coating obtained. Nevertheless, Korte teaches the production of oxide layers which are subsequently dyed electrolytically or are directly dyed adsorptively with a dye of formula I (col. 6, lines 30-34).

Applicants state that Korte does not tell how to avoid the formation of such dark anodized coating on the surface of an aluminum alloy containing more than three or four percent by weight magnesium.

In response, the Korte reference does not tell how to avoid the formation of such dark anodized coating on the surface of an aluminum alloy containing more than three or four percent by weight magnesium because Korte does not teach the color of the anodized coating obtained.

Applicants state that the disclosure of Korte does not contain any teaching concerning producing clear anodized coatings on AA5083 type aluminum alloys.

In response, it appears that the DS process disclosed by Korte (col. 6, lines 9-11) would have produced an anodized layer that is clear because the DS process produces

such a layer as taught by Gillich (col. 1, line 66 to col. 2, line 29).

There is no requirement that the motivation to make the combination be expressly articulated in one or more of the references. The teaching, suggestion or inference can be found not only in the references but also from knowledge generally available to one of ordinary skill in the art. *Ashland Oil v. Delta Resins* 227 USPQ 657 (CAFC 1985). References are evaluated by what they collectively suggest to one versed in the art, rather than by their specific disclosures. *In re Simon* 174 USPQ 114 (CCPA 1972); *In re Richman* 165 USPQ 509, 514 (CCPA 1970).

In regards to AA5083 type aluminum alloys, this is not presently claimed.

Gillich, U.S. 5,760,981

Applicants state that the thickness of Gillich's non-porous aluminum oxide layer is only 30 nanometers to 190 nanometers. Gillich does not make an anodized aluminum oxide layer as produced in Applicants' claimed processes.

In response, claim 1 as presently written does not recite the thickness of the anodized layer.

Furthermore, Korte teaches forming a coating of aluminum oxide having a thickness of about 10 to 25 micrometers (= 2 to 35  $\mu\text{m}$ ) [col. 5, line 66 to col. 6, line 49]. The rejection is not overcome by pointing out that one reference does not contain a particular limitation when reliance for that teaching is on another reference. *In re Lyons* 150 USPQ 741 (CCPA 1966). Moreover, it is well settled that one cannot show nonobviousness by attacking the references individually where, as here, the rejection is

based on a combination of references. *In re Keller* 208 USPQ 871 (CCPA 1981); *In re Young* 159 USPQ 725 (CCPA 1968).

Applicants state that none of Gillich's practices are applicable to the formation of colorable aluminum oxide coatings on high magnesium content aluminum alloys.

In response, Korte teaches that the anodic oxidation of the aluminum or aluminum alloy for passivation and formation of a porous layer can take place in accordance with known methods, using direct and/or alternating current, and using electrolyte baths that are suitable in each case. Such anodizing techniques known in the art include the DS process (col. 6, lines 2-11).

Gillich's practices are applicable to the formation of colorable aluminum oxide coatings on high magnesium content aluminum alloys because when Korte discloses that known methods can be used to form the porous layer, the known DS process (= dc-  
 $H_2SO_4$ ) wherein the concentration of sulfuric acid is normally 20% (= about 100-200 g/l sulfuric acid), the electrolyte temperature between 15° to 30° C, and the current density up to 3 A/dm<sup>2</sup> (col. 2, lines 5-10) as taught by Gillich would have been suitable to use.

Applicants state that Gillich certainly does not describe any process for clear coat anodizing of aluminum alloys with more than 3 or 4% magnesium.

In response, the rejection is not overcome by pointing out that one reference does not contain a particular limitation when reliance for that teaching is on another

reference. *In re Lyons* 150 USPQ 741 (CCPA 1966). Moreover, it is well settled that one cannot show nonobviousness by attacking the references individually where, as here, the rejection is based on a combination of references. *In re Keller* 208 USPQ 871 (CCPA 1981); *In re Young* 159 USPQ 725 (CCPA 1968).

Korte teaches anodizing using the DS process and Gillich teaches that the DS process comprises a concentration of sulfuric acid is normally 20% (= about 100-200 g/l sulfuric acid), an electrolyte temperature between 15° to 30° C, and a current density up to 3 A/dm<sup>2</sup> (see above).

These teachings will suggest to the artisan to take an aluminum alloy having a magnesium content of  $\leq$  6% by weight (Korte, col. 5, lines 55-65) and form an aluminum oxide layer on its surface by using the DS process (Korte, col. 6, lines 2-11) wherein the DS process comprises a concentration of sulfuric acid of normally 20% (= about 100-200 g/l sulfuric acid), an electrolyte temperature between 15° to 30° C, and a current density up to 3 A/dm<sup>2</sup>) [Gillich, col. 2, lines 5-10].

Since the anodizing conditions of the DS process are similar to the anodizing conditions as presently claimed, one would have expected that a clear anodized layer would have been produced.

Applicants state that Gillich does not provide any teaching that always produces a clear anodized coating on magnesium containing aluminum alloys.

In response, inoperativeness of a reference is not established by merely showing

that a particular disclosed embodiment is lacking in perfection does not establish non-obviousness. *Ex parte Allen* 2 USPQ 2d 1425 (BPAI 19870; *Decca Ltd. V. United States* 191 USPQ 439 (Ct. Cl. 1976); *Bennett v. Halahan* 128 USPQ 398, 401 (CCPA 1961). Askin et al., U.S. 5,616,231

Applicants state that while the Askin et al. process may be conducted prior to an anodization process, there is nothing in this disclosure that relates this technology to the anodization of magnesium containing aluminum alloys for the purpose of producing clear anodized coatings.

In response, the rejection is not overcome by pointing out that one reference does not contain a particular limitation when reliance for that teaching is on another reference. *In re Lyons* 150 USPQ 741 (CCPA 1966). Moreover, it is well settled that one cannot show nonobviousness by attacking the references individually where, as here, the rejection is based on a combination of references. *In re Keller* 208 USPQ 871 (CCPA 1981); *In re Young* 159 USPQ 725 (CCPA 1968).

Korte and Gillich are relied upon for the technology of anodizing aluminum and coloring an anodized aluminum layer (see above).

Present claim 3-4 and 6-7 has to do with the surface treatment of magnesium containing aluminum alloys. Not only is the magnesium content in the surface is reduced to less than three percent, but also a glossy surface is produced as presently claimed.

Askin et al. teaches electropolishing by immersing a magnesium containing aluminum alloy in an aqueous acid solution at a temperature below about 100°F (= 90°-150°F), said solution comprising ten to twenty percent sulfuric acid (= 8-15 vol%) and forty to eighty percent phosphoric acid (= 50-70 vol%) and establishing the alloy as an anode in a direct current circuit with said solution as an electrolyte and applying a direct current voltage of 10 to 25 volts (= between 5 and 50 volts) to the alloy [col. 2, line 52 to col. 3, line 16]. One skilled in the art would have expected a bright (= glossy) surface and a reduced magnesium content because similar processes can reasonably be expected to yield products which inherently have the same properties. *In re Spada* 15 USPQ 2d 1655 (CAFC 1990); *In re DeBlauwe* 222 USPQ 191; *In re Wiegand* 86 USPQ 155 (CCPA 195).

Komatsubara et al., U.S. 5,181,969

Applicants state that Komatsubara et al. do not attempt to avoid color formation in the anodized material so that it can be subsequently colored to choice.

In response, Komatsubara et al. is used in the Examiner's rejection for the reasons of "the magnesium content in said surface is reduced to less than three percent" (from claim 3, line 7; and claim 6, line 7). Although one would have expected a reduced magnesium content by the electropolishing process of Askin et al., one would be desired to have reduced the magnesium content to less than three percent because 2.0-8.0% magnesium in aluminum alloys would have imparted superplasticity and

strength after forming as taught by Komatsubara et al. (col. 3, lines 39-56).

The amount of magnesium is a result-effective variable and one skilled in the art has the skill to calculate the amount that would determine the success of the desired reaction to occur, e.g., superplasticity, absent evidence to the contrary. MPEP § 2141.03 and § 2144.05(b).

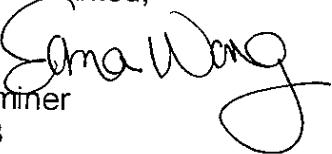
The Combination of References

The Korte, Gillich, Askin et al. and Komatsubara et al. references all relate to the surface treatment of aluminum alloys. It is well within the skill of one having ordinary skill in the art to follow the teachings of these reference and employ the techniques of pretreatment, anodizing and coloring as taught by these references to treat aluminum alloy for their known functions and for doing the same endeavors.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Edna Wong  
Primary Examiner  
Art Unit 1753



Edna Wong  
January 12, 2004

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